

In Propria Persona

UNITED STATES DISTRICT COURT
DISTRICT OF CALIFORNIA

Ronnell Hill,

PETITIONER,

v.

F.B Haws et al.,

RESPONDENTS.

NO. 07-3229 JSW
TRAVERSE TO RETURN TO PETITION
FOR WRIT OF HABEAS CORPUS

Ronnell Hill, Petitioner, makes this Traverse to Respondent's Return to his Petition for Writ of Habeas Corpus and alleges as follows:

1. Paragraph Number I of Respondent's Return is untrue because it alleges that Petitioner's custody is lawful and proper;

2. Paragraph Number III of Respondent's Return is untrue;

3. Paragraph Number IV of Respondent's Return is untrue;

4. Paragraph Number _____ of Respondent's Return is untrue;

5. Paragraph Number _____ of Respondent's Return is untrue;

6. Paragraph Number _____ of Respondent's Return is untrue;

7. Paragraph number _____ of Respondent's Return is untrue;

8. Paragraph Number _____ of Respondent's Return is untrue;

1 9. Paragraph Number _____ of Respondent's Return is untrue;

2 10. Petitioner incorporates by reference and resubmits his Petition for Writ
3 of Habeas Corpus as is fully set forth herein; and

4 11. Petitioner also incorporates by reference the Memorandum of Points and
5 Authorities and exhibits to his Petition and this Traverse, specifically:

6 Exhibit A, in support of Number I herein;

7 Exhibit B, in support of Number I herein;

8 Exhibit C, in support of Number I herein.

9 Exhibit D, in Support of No. I herein.

10 Exhibit E, in Support of No. II herein

11 Dated 7.22.08, 2008

12 Respectfully Submitted,

Ramel Dill

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Argument I

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3 Trial counsel did not function as counsel
4 guaranteed by the Sixth amendment so as
5 to provide reasonably effective assistance but
6 also that counsel's errors were so serious as
7 to deprive petitioner of a fair trial because
8 of a reasonable probability that, but for
9 counsel's unprofessional errors, the result
10 of the trial would have been different.

11
12 The benchmark for judging any claim of
13 ineffectiveness of counsel must be whether
14 counsel's conduct so undermined proper
15 functioning of adversarial process that trial
16 cannot be relied on as having produced a just
17 result. Defendant must show that counsel's
18 performance was deficient, requiring showing
19 that counsel made errors so serious that
20 counsel was not functioning as "counsel"
21 guaranteed defendant by the Sixth amend-
22 ment and, second, defendant must show the
23 deficient performance prejudiced the defense
24 by showing that counsel's errors were so
25 serious as to deprive defendant of a fair
26 trial, a trial whose result is reliable
27 (Strickland v Washington 466 U.S. 668)
28 Trial counsel, in petitioner's case represented

1 conflicting interest in petitioners defense
2 strategy. Choosing a bizarre, insane and
3 incredible defense a "rough sex defense" (RTpp
4 349, 507, 586) with no merit and no reason-
5 ably substantial investigation into that line
6 of defense. It "rough sex defense", being in
7 conflict and not in line with petitioners
8 occurrence of events. (Jane Does jealousy of
9 another woman (RTpp. 513, 514, 516) and the
10 fact that Jane Doe was supposedly held
11 hostage yet, talked to Miriamne alleged
12 mistress of petitioner, yet didnt ask for
13 help) nor even a plausible line of defense in
14 relation to the injuries of the alleged
15 victim, a tactic or a strategy that could
16 not be construed to be a sound tactical,
17 nor "sound trial strategy" furthermore
18 trial counsel undermined the confidence
19 of the outcome of the trial by, refusing
20 to call as a critical witness for the
21 defense (Marsden Hearing July 1, 2004 p. 1258)
22 The defenses own investigator to impeach
23 the testimony of the prosecutions only
24 material witness, the alleged victim Jane
25 Doe. Counsel further undermined the
26 defense by not revealing to the court,
27 nor the jury, the fact that Jane Doe
28 has not, one but two prior criminal

1 cases (See exhibit A) a fact that any
2 reasonably competent attorney would
3 have revealed to a jury so that Jane
4 Does (along with all the other factors so
5 listed in this petition) credibility could be
6 scrutinized and weighed on a scale, as well
7 as the petitioners, especially when Jane
8 Doe stated she had no criminal record
9 to the defense investigator (See exhibit B)
10 Jane Doe further stated in a sworn state-
11 ment to the defense investigator that
12 she did not want her business revealed to
13 her parents (See exhibit B) pertaining to the
14 case at hand. Counsel instead of filing a
15 motion according to §68. of the penal Code,
16 which states in relevant part "information
17 provided by the defendant or noticed by
18 the courts establishes that there is a
19 reasonable likelihood that the attendance
20 of members of the alleged victims family
21 poses a risk of affecting the content of
22 the testimony of the victim or any other
23 witness" yet Jane Does parents were seated
24 in the front row. In part for this, and the
25 so said reasons above alone, the defense
26 investigator was crucial, if not the
27 mainframe of the petitioners defense.
28 Trial counsel did not offer not, one piece

1 of physical evidence, even excluding
2 petitioner's booking photo (See exhibit C)
3 With a 6" wound to the right side of petitioner
4 ers head where, petitioner testified at trial
5 to being the initial hit by Jane Doe which,
6 Jane Doe denied at trial (RTp 89) and
7 testifying officers denied petitioner
8 identifying during his initial statement to
9 officers (RTp 600) and officers admitted to
10 never even looking for a bookend, which
11 petitioner alleged to have been hit with
12 (RTp 601) yet it was identified by petition-
13 er in his initial statement and officers
14 photographed the injury (See exhibit C)
15 There was only one pre-trial motion. There
16 was no residue test done for the alleged
17 bottle top alleged to be put inside Jane
18 Does anus and although blood samples
19 were taken from the crime scene on knives,
20 glasses, etc no investigation was gathered
21 to conclusively point to whom the blood
22 belonged. No fingerprint investigation done
23 by either the investigating officers (RT
24 pp 561, 562, 564) nor the defense on the
25 bottle top, Several knives allegedly used or
26 anything else. Sexual assault evidence
27 was inconclusive (RTp 583) but even so, in
28 earlier testimony Jane Doe stated she

1 Was not forced to have sex (Prelim. exam pp.
 2 85, 86 and RT pp. 509, 510, 810) Jane Doe also
 3 stated she was held hostage in the house
 4 for four days, yet when police inventoried
 5 the crime scene, a working telephone,
 6 fax machine and house keys were present
 7 in the home (Police report p. 8 of Jane
 8 Doe's Statement) With all the evidence
 9 available and with all the evidence
 10 collected and at the disposal of both
 11 sides, both sides still chose to set aside
 12 all evidence and investigations and rely
 13 instead on the sole credibility of Jane
 14 Doe when the defense (trial counsel) had
 15 beforehand knowledge that Jane Doe's
 16 credibility was less than Sterling (See exhibit
 17 D) I can understand the prosecution's
 18 reasoning, but never the defense. Through-
 19 out petitioner's case the petitioner was
 20 subjected to ineffective assistance of
 21 counsel (See May 14, 2003 Marsden Hearing)
 22 and petitioner has filed in court to the
 23 judge (10/02/03) 6 months before trial
 24 a letter of petitioner's dissatisfaction
 25 with trial counsel (Petitioner has a copy
 26 of letter filed) Trial counsel actively
 27 represented conflicting interest (Cuyler v.
 28 Sullivan 466 U.S. 348, 350) by refusing to call

1 the defenses investigator to testify, adversely
2 affecting counsel's performance and the
3 trial's outcome. Combined with the before-
4 mentioned errors, counsel's errors being
5 so serious as to deprive petitioner of his
6 Sixth Amendment right to, reasonably effective
7 counsel. Due to counsel's deficient
8 performance Jane Doe's credibility was
9 never tested and inadequately challenged.
10 Without Jane Doe's credibility being
11 tested, everything testified to at trial,
12 regarding any evidence or any alleged
13 fact or statement by, Jane Doe must be
14 viewed as suspect and unreliable, therefore
15 lacking this critical element of
16 the adversarial process, credibility to
17 produce just results, exposed petitioner
18 to insurmountable prejudice which, cannot
19 be construed as being tactical, nor harmless
20 but fundamentally defective structural
21 in error that must be corrected
22 regardless of its effect on the trial
23 because it violates basic protections without
24 which a criminal trial cannot reliably
25 serve its function as a vehicle for
26 determination of guilt or innocence and
27 no criminal punishment may be regarded
28 as fundamentally fair automatically

1 requiring reversal of petitioner's convict-
2 ions and petitioner remanded back to
3 court for retrial

4
5 Dated: 7.22.08
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Respectfully in
Pro Per
Ronnell Hill
Ronnell Hill

Argument II

Imposition of upper terms and imposition of consecutive Sentences for petitioners multiple counts of conviction was unlawful and violated petitioners federal Constitutional Rights to proof beyond a reasonable doubt and a jury trial (U.S Const, Amends. 5th, 6th, 14th) because the factors cited to support them were neither admitted by the petitioner, nor found by a jury.

In Blakely V. Washington 542 US 296 the court clarified the statutory maximum for Apprendi purposes is the maximum Sentence a judge may impose solely on the basis of facts reflected in the jury verdict or admitted by the defendant, here the court found it was compelled to impose consecutive life Sentences based on facts not reflected in the jury Verdict, nor admitted by the petitioner, making the courts Sentencing factors invalid, because the court did not find the existence of those factors beyond a reasonable doubt (Cunningham V. California, No. 05-6551.) While that should be the end of the matter a fact

1 that is an element of the crime," However,
2 shall not be used to impose the upper
3 term Rule 4.420(d) and unlike aggravating
4 circumstances, Statutory enhancements
5 must be charged in the indictment and
6 petitioner has a right to an instruction
7 on each element of the offense of which
8 the petitioner is charged and the under-
9 lying facts must be proved to the jury
10 beyond a reasonable doubt. A fact under-
11 lying an enhancement cannot do double
12 duty; it cannot be used to impose an
13 upper term Sentence and, on top of that,
14 an enhanced term. California's determinate
15 Sentencing law (DSL) assigns to the trial
16 judge not the jury authority to find
17 the facts that expose a defendant to an
18 elevated "upper term" Sentence. The facts
19 so found are neither inherent in the jury's
20 Verdict, nor embraced by the defendant's
21 plea, and they need only be established
22 by preponderance of the evidence, not
23 beyond a reasonable doubt. The question
24 presented is whether the DSL, by placing
25 Sentence - elevating factfinding within the
26 judge's province, violates a defendant's
27 right to trial by jury safeguarded by
28 the Sixth and Fourteenth Amendments

1 United States Supreme Court precedent
 2 Says that it does (Apprendi V New Jersey
 3 530 U.S. 466⁽²⁰⁰⁰⁾) Ring V Arizona 536 U.S. 584⁽²⁰⁰²⁾
 4 Blakely V. Washington 542 U.S. 296⁽²⁰⁰⁴⁾) (United -
 5 States V Booker, 543 U.S. 220⁽²⁰⁰⁵⁾) (Cunningham
 6 V California No. 05-6551⁽²⁰⁰⁷⁾) and although
 7 the court denied the petitioner on his
 8 Second claim stating an error in the
 9 interpretation or application of state law,
 10 which is not cognizable in federal habeas
 11 corpus. The petitioner respectfully states
 12 that the issue raised in that claim still
 13 falls under the blanket of Cunningham,
 14 being that the court cited four grounds
 15 for sentencing pursuant to 667 D yet none
 16 are sufficient to support court's sentenc-
 17 ing choice, nor none supported by the
 18 record. Where a statute annexes a higher
 19 degree of punishment to a common-law
 20 felony, if committed under particular
 21 circumstances, an indictment for the
 22 offense, in order to bring the defendant
 23 within that higher degree of punishment,
 24 must expressly charge it to have been
 25 committed under those circumstances
 26 and must state the circumstances with
 27 certainty and precision and the
 28 prosecutor must prove at trial the

1 elements of the Statutory offense. The
2 factors the court cited are elements of
3 the alleged crimes erroneously stated
4 only, by the court which is contrary to
5 and in direct conflict with what Jane
6 Doe testified to at trial (RT_{pp} 292-295)
7 "It was all one act" "all the same incident"
8 and certainly not taken before a jury
9 and proven Beyond a Reasonable Doubt.
10 But the State allowed the judge to find
11 the required facts under a lesser standard
12 of proof. Despite what appears to the
13 petitioner the clear "elemental" nature
14 of the factors here, the relevant inquiry
15 is one not of form, but of effect, does
16 the required finding expose the defendant
17 to a greater punishment than that
18 authorized by the jury's guilty verdict?
19 The petitioner received 184 yrs to life
20 Both in terms of absolute years behind
21 bars, and because of the more severe
22 stigma attached, the differential here
23 is unquestionably of Constitutional
24 significance and definitely warrants
25 a jury's verdict on all factors (Apprendi
26 v New Jersey 530 U.S 466) the California
27 Supreme Court denied petitioners case
28 without prejudice pending the decision

1 in the Cunningham Case (See exhibit E) Now
2 decided the Cunningham case should be the
3 end all to the end all of the governments
4 case Setforth in United States Supreme
5 Court precedent for structural defects in the
6 constitution of the trial mechanism Warrants
7 per se reversible error and that this court
8 revoke petitioners Sentence and remand back
9 to court for resentencing.

10
11 Respectfully in proper

12 Dated: 7.22.08

Ronell Hill
Ronell Hill

#A

AFFIDAVIT RE SUBPOENA DUCES TECUM
DEFINITIONS

The following Definitions are applicable throughout this Subpoena Duces Tecum.

1.) "You" and "your" means you and any person acting or purporting to act on your behalf.

2.) "Document" means any writings and any other tangible thing(s) in your custody, possession or control or known to you, whether printed, recorded, reproduced by a process, or written or produced by hand, but not limited to, letters, reports, agreements and communications.

3.) The exact matter or things to be produced are the following:

A.) **Certified copy of the following dockets 308698HHJ and 354974B, Cynthia Anita Anderson, AKA: Cynthia Anita Moragne, Cynthia Anita Hill and Cynthia Anita Hall.**

B.) **Records search and certified copy of any and all dockets for Cynthia Anita Anderson, AKA: Cynthia Anita Moragne, Cynthia Anita Hill and Cynthia Anita Hall, DOB, March 28, 1961.**

These documents are necessary on a criminal matter pending in the Superior Court of Monterey County.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Salinas, California, on January 16, 2004.


TERRANCE K. MCCLEEREY

B

**GARRY ST. CLAIR
PRIVATE INVESTIGATIONS**

November 06, 2003

Cynthia Hill

Supplement to initial interview

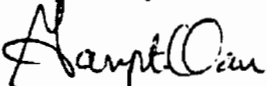
Per request of client, see below additional information that this writer did not prepare in his interview with Cynthia.

Cynthia stated to me during my interview with her that Ronnell fabricated reports concerning her past involvement with any criminal wrongdoing. Cynthia stated that she was never involved with any bank robbery anywhere, nor involved with helping an old boyfriend steal from K-Mart. She admitted to using drugs in the past, but was very protective in that area.

Cynthia stated that she did not want her parents to find out her past as she is very private and did not want them to know some of the things she has done wrong in her past. She made it clear to this writer that her personal life is hers and she does not want it broadcasted.

I declare under the laws of California, that the foregoing is true and correct to the best of my knowledge.

Prepared by.



Garry St. Clair
Private Investigations

MUGSHOT PROFILE

#C

2



LOCATION:
RIGHT Side OF
Head

HILL, RONNELL RAY
(Last, First Middle)

RACE:	B	HAIR LENGTH:	BIRTH PLACE:	OAKLAND
SEX:	M	HAIR STYLE:	OCCUPATION:	CASHIER
HT:	600	FACIAL HAIR:	BOOK DATE:	02/09/2003
WT:	240	APPEARANCE:	BOOK TIME:	16:26
HAIR:	BROWN	COMPLEXION:	CHARGE 1:	664/187 PC
EYES:	BROWN	DEMEANOR:	CHARGE 2:	236 PC
DOB:	05/02/1967	PHY IDENT 1:	CHARGE 3:	286(A) PC
AGE:	35	PHY IDENT 2:	CHARGE 4:	245(A)(1) PC
DL No:	C0558524	PHY IDENT 3:	CHARGE 5:	1203.2(A) PC
DL State:	CA		CHARGE 6:	273.5(A) PC
ID No:	000055	CII No:	PHOTO No:	03M00098
SSN:	561-65-8698	FBI No:	BOOK No:	MJ0300055

**** FOR LAW ENFORCEMENT USE ONLY ****

#D

**GARRY ST. CLAIR
PRIVATE INVESTIGATIONS**

December 16, 2003

Cynthia Hill

I spoke with Cynthia via phone at which time she shared additional information pertaining to this case.

Cynthia stated that she and her sister did not go and spend the night at Mrs. Porters after she was released from the hospital. Cynthia stated after she was released from the hospital she and her sister went directly to her sisters house to hide from Ronnell.

Cynthia stated that after she began healing from the incident, she talked with Mrs. Porter several times about the incident and what Ronnell did to her.

Regarding making reservations for her flight to Las Vegas, concerning the night of the alleged incident, Cynthia explained that she actually made reservations and had a courtesy hold on the ticket at the airport for if and when she arrived. Cynthia stated that she changed her mind, never going to the airport to buy the ticket.

Cynthia stated that she never told this writer that anyone in her past abused her, including her ex husband and ex boyfriend. I told Cynthia that she told me that both her ex husband Ronald Moragne, and her ex boyfriend Andre Kendrix, both physically abused her. I further told her that she told me that she filed charges against Andre Kendrix, for rape and abuse. Cynthia immediately denied ever telling me about anyone abusing her, except for Ronnell.

Cynthia told me that she and Ronnell had trouble with their relationship while they lived in Oakland. But Cynthia could not recall if the police ever became involved.

Cynthia suggested that I go see Laura, both her and Ronnell's friend, as she knows a lot about Ronnell and his drug usage. Cynthia shared that Laura works at the Goodwill in Pacific Grove.

Regarding the incident with Ronnell, Cynthia answered my question about her usage with drugs with Ronnell by stating: " He made me do crank or crack one time during that week." " I didn't know if I was going to live or not, I was fighting for my life." She further told me that she doesn't do drugs and doesn't know the difference between crank or crack, except that they are both white.

Regarding Myriam, Cynthia stated that she was aware that a male was staying with Myriam prior to the time that the incident occurred with her and Ronnell. Cynthia still believes that Ronnell was sleeping with Myriam prior to her incident with Ronnell.

Cynthia stated that she never saw Ronnell use a ladder to enter their apartment during the time he kept her captive. She stated that he did not need a ladder because he had the keys to the front door.

Court of Appeal, Sixth Appellate District - No. H027710
S140531

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

RONNELL RAY HILL, Defendant and Appellant.

Petition for review denied without prejudice to any relief to which defendant might be entitled after the United States Supreme Court determines in *Cunningham v. California*, No. 05-6551, the effect of *Blakely v. Washington* (2004) 542 U.S. 296 and *United States v. Booker* (2005) 543 U.S. 220, on California law.

SUPREME COUR
FILED

FEB 22 2006

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

PROOF OF SERVICE BY MAIL

(CCP §§1013(a), 2015.5; 28 U.S.C. §1746)

I, Ronnell Hill, hereby declare that I am over the age of 18, I am the petitioner in the above-entitled cause of action, and my legal mailing address CSP/LAC - A3-141, P.O. BOX 8457, Lancaster, CA 93539-8457.

On 7.22.08, I delegated to prison officials the task of mailing, via the institution's internal mail system (*Houston v. Lack*, 487 US 266 [101 L.Ed.2d 245; 108 S.Ct. 2379] (1988)), the below entitled legal document(s): Traverse in return of writ of Habeas Corpus

by placing said documents in a properly addressed and sealed envelope, with postage fully pre-paid, in the United States Mail, deposited in the manner provided by CSP/LAC, and addressed as follows:

Office of the clerk,
District Court, Northern Dist.
450 Golden Gate Avenue
San Francisco, CA 94102

I further declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 22 day of July 2008 at California State Prison - Los Angeles County.

Ronnell Hill